

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BRISTOL-MYERS SQUIBB COMPANY
430 East 29th Street, 14th Floor
New York, NY 10016,

Plaintiff,

v.

L. FRANCIS CISSNA, Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, DC 20529

KIRSTJEN M. NIELSEN, Secretary
U.S. Department of Homeland Security
650 Massachusetts Avenue, NW
Washington, DC 20001

LAURA B. ZUCHOWSKI, Director
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479,

Defendant.

Civil Action No. 1:19-cv-00443

COMPLAINT

Introduction

1. Plaintiff Bristol-Myers Squibb Company (“BMS”) challenges the unlawful denial of its nonimmigrant petition (EAC-18-137-50867) seeking approval of H-1B classification on behalf of Ms. Manasa Parakala under 8 U.S.C. § 1101(a)(15)(H).

2. BMS is a global pharmaceutical company whose mission is to discover, develop, and deliver innovative medicines that help patients prevail over serious diseases. The “Established Brands Organization” within BMS delivers value to the company by simplifying

and optimizing brands that are late in their life cycle using experimental and data driven approaches with a focus on integration across the end-to-end supply chain of designated products.

3. As described in its initial petition to U.S. Citizenship and Immigration Services (hereinafter “USCIS” or “the Service”), BMS seeks to employ Ms. Parakala in the role of Life Cycle Manager, Established Products to develop and implement analytics and governance in support of the company’s Global Product Development & Supply (“GPS”) division. Classified in the “Logistician” occupation according to the U.S. Department of Labor taxonomy, the minimum requirements of the role included “attainment of a bachelor’s degree, or equivalent, in Life Sciences, Supply Chain Management, Engineering, or related.” *See* Ex. 1 (March 30, 2018, Employer Support Letter).

4. On November 23, 2018, USCIS denied the H-1B petition, concluding that “on the basis of the position’s educational requirement alone, you have not established that the position is in a specialty occupation as defined above.” *See* Ex. 3 (November 23, 2018 Notice from USCIS). The denial further states that “the evidence of record does not establish that the offered position as described meets any of the four criteria specified in 8 CFR, section 214.2(h)(4)(iii)(A).” *Id.*

5. The denial of the petition by USCIS runs counter to, and fundamentally disregards, substantial evidence in the record. The decision is arbitrary and capricious and an abuse of its discretion, and not in accordance with the law.

6. Plaintiff BMS seeks an order overturning the denial and requiring USCIS to adjudicate and approve its H-1B nonimmigrant petition.

Jurisdiction and Venue

7. This is a civil action brought under 5 U.S.C. §§ 702, 704 of the Administrative Procedure Act (“APA”). This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question subject matter jurisdiction) and 28 U.S.C. § 1361. This Court also has authority to grant declaratory relief under 28 U.S.C. §§ 2201–02, and injunctive relief under 5 U.S.C. § 702, and 28 U.S.C. § 1361. The United States waives sovereign immunity under 5 U.S.C. § 702.

8. Venue is proper under 28 U.S.C. § 1391(e)(1)(A) as a civil action brought against officers and agencies of the United States in their official capacities in the district where the Defendants reside.

Parties

9. Plaintiff BMS is a Delaware corporation headquartered in New York, NY.

10. Defendant USCIS is a component of the U.S. Department of Homeland Security (“DHS”), 6 U.S.C. § 271, and an “agency” within the meaning of the APA, 5 U.S.C. § 551(1). USCIS adjudicates petitions for immigration benefits, and denied the nonimmigrant petition BMS filed on behalf of Ms. Parakala.

11. Defendant L. Francis Cissna is the Director of USCIS. He has ultimate responsibility for the denial of BMS’s petition and is sued in his official capacity.

12. Defendant Kirstjen M. Nielsen is the Secretary of DHS, and is sued in her official capacity.

13. Defendant Laura B. Zuchowski is the Director of the Vermont Service Center, and is sued in her official capacity. She leads the specific office within USCIS that adjudicated the petition.

Legal Framework

14. The Immigration and Nationality Act (“INA”) provides H-1B classification for foreign nationals, in pertinent part, “coming temporarily to the United States to perform services... in a specialty occupation.” 8 U.S.C. § 1101(a)(15)(H).

15. A specialty occupation is a position that requires the theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. 8 U.S.C. § 1184(i)(1).

16. DHS regulations define specialty occupation to mean “an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.” 8 C.F.R. § 214.2(h)(4)(ii).

17. Implementing regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A) further provide that a position will satisfy the statutory definition of specialty occupation if it meets one of the following criteria:

- A baccalaureate or higher degree or equivalent is normally the minimum requirement for entry into the particular position;
- The degree requirement is common in industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular

position is so complex or unique that it can be performed only by an individual with a degree;

- The employer normally requires a degree or equivalent for the position; or
- The nature of specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with attainment of a baccalaureate or higher degree.

18. To perform services in a specialty occupation, a beneficiary must, *inter alia*, hold a U.S. bachelor's or higher degree from an accredited college or university (or a foreign degree determined to be equivalent) as required by the specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(C).

Factual Allegations

19. USCIS accepted an H-1B nonimmigrant petition filed by Plaintiff on behalf of beneficiary Ms. Manasa Parakala on April 12, 2018.

20. Ms. Parakala has been employed by BMS since June 2015, and has served in the proffered role of Life Cycle Manager, Established Brands since April 2018. She is authorized to work in the United States through March 19, 2020, pursuant to an H-4 dependent Employment Authorization Card. *See* Ex. 4 (Employment Authorization Card).

21. Ms. Parakala earned a Master of Business Administration degree with a specialization in Supply Chain Management from Rutgers University in May 2015.

22. As the Plaintiff described in its initial letter of support, the position of Life Cycle Manager, Established Products must be capable of leading and coordinating GPS activities with an “integrated view across the end-to-end supply chain of designated products.” (Ex. 1 at 1). This

includes working closely across complex functional groups (site operations, manufacturing, Global Supply Chain, commercial, regulatory, medical, and finance) to advocate for the value of the company's products across their entire lifecycles. *Id.*

23. USCIS issued a Request for Evidence ("RFE") on May 15, 2018, and called for additional evidence that the position offered to the beneficiary meets the requirements for a specialty occupation. *See* Ex. 2 (May 15, 2018 Notice from USCIS).

24. Plaintiff submitted its timely response on August 9, 2018, and, along with substantial evidence documenting the "specialty occupation" nature of the position, attached a support letter from Raveena Gayo, Manager, Immigration Services with BMS. This letter provided more detailed explanations of the beneficiary's proposed day-to-day job duties and the company's minimum requirements for the role, and tied these requirements to both the Logistician occupation generally and the company's specific needs for this particular role. *See* Ex. 5 (Employer Response Letter).

25. As the RFE response letter elaborates, the Established Brands portfolio encompasses more than 60 brands across 75 marks, and an effective Life Cycle Manager must be able to apply a strong background in supply chain and logistics to "anticipate and simplify strategies and ways of working for current and incoming late stage brands." (Ex. 5 at 1).

26. In its response to the RFE, Plaintiff clarified that the minimum requirements for the position include the attainment of a Bachelor's degree, or equivalent, in Life Sciences, Supply Chain Management/Engineering, or a closely related field:

because the position is a supply chain position within a pharmaceutical company,
BMS will accept candidates with Life Sciences degrees and substantial supply

chain experience or an additional degree in Supply Chain Management/Engineering, or conversely a degree in Supply Chain Management and substantial life sciences/pharma experience or an additional life sciences degree.” (Ex. 5 at 3-4).

27. Plaintiff submitted the following documentation, uncontroverted by Defendants, as evidence of the specialized nature of the role:

- Expert Letter by Dr. Arnold B. Maltz, Associate Professor Emeritus of Supply Chain Management at the W.P. Carey School of Business, Arizona State University;
- Organizational Chart for the Plaintiff’s Established Brands operations;
- Two job descriptions for similar positions within the Plaintiff’s organization, both of which reflect minimum requirements in line with those of the instant petition; and
- Three job postings for similar roles with other companies in the pharmaceutical industry, all of which also include minimum requirements similar to those of Ms. Parakala’s position; and
- An O*Net summary report for the Logistician occupation.

28. The expert opinion letter provided by Dr. Maltz concludes with the following regarding the Logistician occupation:

Based on my qualifications and industry expertise, I conclude that the positions of “Logistician, Logistics Engineer, and Logistics Analyst” are specialty occupations... requiring the theoretical and practical application of a body of specialized knowledge and advanced skills requiring a minimum of a Bachelor’s degree in Business Logistics, Supply Chain Management, Industrial Engineering or a closely related field. (Ex. 5 at 9).

29. USCIS ultimately denied Plaintiff’s petition on November 23, 2018. Focusing entirely on the position’s stated minimum requirements as described in the initial support letter, the denial offers a conclusory and unsupported rationale, to the effect that Plaintiff did not establish the eligibility of the proffered position under any of the four “specialty occupation” factors enumerated by regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

30. Despite a detailed response from the Plaintiff supported by the credible documentation outlined above, the denial simply provides a bullet-point list of the evidence in the record. USCIS then reiterates essentially the same issue that it outlined in the RFE as its basis for the denial:

You indicated that the minimum entry requirements for the offered position are a wide variety of disparate fields of study, as the offered position requires a bachelor’s degree, or its equivalent, in Life Sciences, Supply Chain Management, Engineering, or related field. A minimum entry requirement of a bachelor’s degree in disparate field of study, does not meet the requirement that the position requires a degree “in the specific specialty (or its equivalent)” unless you establish how each field is directly related to the duties and responsibilities of the particular

position. (Ex. 3 at 3.)

31. Apart from Defendants' failure to address in a meaningful way the evidence provided by the Plaintiff to demonstrate that the position is a "specialty occupation," there is no basis in law or regulation for Defendants' conclusion that a range of educational degrees, as opposed to a unitary educational degree, cannot support a "specialty occupation." Moreover, Defendants' apparent claim that Plaintiff did not explain how each educational field is related to the position is patently false.

32. Similarly, the claim in the denial that the Plaintiff "indicated that one of the minimum requirements for the offered position is a degree in engineering without further specialization or explanation" is false. (Ex 3 at 4). To cut and paste cherry-picked snippets such as this from Plaintiff's original submission for inclusion in a templated denial without substantive review and analysis of the additional information provided in response to the RFE contradicts the denial's assertion that USCIS examined the totality of the evidence under the required "preponderance of the evidence" standard.

33. This denial leaves Ms. Parakala at risk of losing her work authorization upon the expiration of her current Employment Authorization Card.

34. Unless the Court vacates the denial of BMS's petition, the company will likely lose the services of a valuable employee in the United States.

Exhaustion

35. The November, 2018, denial by USCIS of BMS's petition constitutes a final agency action under the APA, 5 U.S.C. § 704. Neither the INA nor DHS regulations at 8 C.F.R. § 103.3(a) require administrative appeal of the denial.

36. Under 5 U.S.C. §§ 702 and 704, BMS has suffered a “legal wrong” and has been “adversely affected or aggrieved” by agency action for which there is no adequate remedy at law.

CAUSE OF ACTION

COUNT I

Administrative Procedure Act Violation (5 U.S.C. § 706)

37. Plaintiff incorporates the allegations set forth in the preceding paragraphs.

38. Defendants’ denial of the Plaintiff’s nonimmigrant petition constitutes final agency action that is arbitrary, capricious, an abuse of discretion, and not in accordance with the law.

39. No rational connection exists between the conclusions asserted by USCIS in its denial and the facts in the record.

REQUEST FOR RELIEF

The Plaintiff requests that this Court grant the following relief:

1. Declare the Defendants’ denial of BMS’s H-1B petition is unlawful.
2. Vacate the denial and order Defendants to promptly approve the nonimmigrant petition.
3. Award Plaintiff its costs in this action; and
4. Grant any other relief that this Court may deem proper.

Dated: February 21, 2019

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Eleanor Pelta

Eleanor Pelta (DC Bar No. 418076)

eleanor.pelta@morganlewis.com

Daniel D. Schaeffer (DC Bar No. 888208991)

daniel.schaeffer@morganlewis.com

1111 Pennsylvania Avenue, NW

Washington, DC 20004

Telephone: +1.202.739.3000

Facsimile: +1.202.739.3001

Attorneys for Plaintiff